

REMARKS

The Examiner has divided the instantly claimed invention into Groups I-VIII (shown on pages 2-3 of the Office Action of March 6, 2009 as being patentably distinct. Applicants elect without traverse Group II and the species compound No. 6-97 shown on page 105, also without traverse.

Restriction is only proper if the claims of the restricted groups are patentably distinct and there would be a serious burden placed on the Examiner if restriction is not required (M.P.E.P. § 803). The burden of proof is on the Examiner to provide reasons and/or examples to support any conclusions in regard to patentable distinction. Moreover, when making a lack of unity of invention in a national stage application, the Examiner has the burden of explaining why each group lacks unity of invention with each other (i.e., why there is no single inventive concept) especially describing the unique special technical feature in each group (M.P.E.P. § 1893.03(d)).

Unity of invention has to be considered in the first place only in relation to the independent claim. A dependent claim is one which contains all the features of another claim and is in the same category of claims as other claims. It does not matter if a dependent claim itself contains a further invention.

Further, Applicants reserve the right to file divisional application on the non-elected subject matter, if so desired, and be accorded the benefit of the filing date of the parent application. Divisional applications filed thereafter should not be subject to double-patenting ground of rejection, 35 U.S.C. § 121, *In re Joyce* (Comr. Pats. 1957) 115 USPQ 412.

Applicants make no statement regarding the patentable distinctness of the species but note that for the restriction to be proper there must be patentable differences.

Applicants submit that the above-identified application is now in condition for examination on the merits and an early notice of such action is earnestly solicited.

Respectfully submitted,

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A handwritten signature in black ink, appearing to read "Paul J. Killos", is written over a horizontal line.

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